IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 19029 of 2007(M)

PETITIONER:

P.K.DINESHAN, S/O P.V.KESAVAN,
PUNNACKAL, THURAVOOR, CHERTHALA,
THE LICENCEE OF T.S.NO.10/07-08 OF GROUP NO.IV
OF KUTHIYATHODU RANGE.

BY ADV. SRI.B.GOPAKUMAR
SMT.CHINCY GOPAKUMAR

RESPONDENTS:

---

1. THE EXCISE COMMISSIONER,
THIRUVANANTHAPURAM.

2. ASSISTANT EXCISE COMMISSIONER,
ALAPPUZHA.

3. THE CIRCLE INSPECTOR OF EXCISE,
CHERTHALA.

BY GOVERNMENT PLEADER SRI. M.R. SABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT-P1:	TRUE COPY OF EXTRACT OF THE LICENCE REGISTER 1999-2000
EXT-P2:	TRUE EXTRACT OF THE LICENCE REGISTER 2001-2002
EXT-P3:	TRUE COPY OF THE NOTICE DATED 1.4.2007 OF THE 2ND RESPONDENT
EXT-P4:	TRUE COPY OF THE APPLICATION ON RECEIPT OF EXT.P3 ON 13.4.2007
EXT-P5:	TRUE COPY OF THE JUDGMENT DATED 1.3.2006 IN W.P (C) NO.6030/2006 (P) BEFORE THIS COURT
EXT-P6:	TRUE COPY OF THE APPEAL DATED 11-5-2007 BEFORE THE 1ST RESPONDENT
EXT-P6 (a):	ORDER NO. A1-624/05 DATED 7.5.2007 ISSUED BY 2ND RESPONDENT
EXT-P7:	TRUE COPY OF JUDGMENT IN WP (C) NO.15867/07 (M) DATED 24.5.2007 IN THIS HON'BLE COURT
EXT-P8:	TRUE COPY OF ORDER NO.XA7-10817/2007 DATED 14.6.2007 ISSUED BY EXCISE COMMISSIONER, TVM (1ST RESPONDENT)
EXT-P9:	TRUE COPY OF ORDER NO.XA2-6279/06 DTD 14.3.06 ISSUED BY 1ST RESPONDENT

/TRUE COPY/

S. SIRI JAGAN, J.

W.P.(C)NO.19029 OF 2007

DATED THIS THE 27th DAY OF JULY, 2007

JUDGMENT

The petitioner sought shifting of his toddy shop, which has been rejected by Ext.P8 order. The petitioner's contention is that the very same toddy shop was located in a particular place during the year 2001-2002. Thereafter, another licencee came in, who conducted the shop in another place. Now, for this year the petitioner was issued licence for the said shop. The petitioner wants to shift the toddy shop to the place, where it was originally being conducted as per Exts.P1 and P2 during the year 2001-2002. The petitioner's contention is that by virtue of the 2nd proviso to Rule 7(2) of the Kerala Abkari Shops Disposal Rules,2002, he is entitled to shifting of the toddy shop to the said premises. However, by Ext.P8 order without considering the claim of the petitioner under the 2nd proviso to Rule 7(2), Ext.P8 order has been passed simply stating that the sight applied for is objectionable as per Rule 7(2) of Kerala Abkari Shops Disposal Rules, 2002 even if the same shop was licenced in the same place during the year 2001-2002.

2. I have heard the learned Government pleader also. In

EXt.P8, I do not find any specific consideration of the claim of the petitioner based on the 2nd proviso to Rule 7(2). In the above circumstances, I quash Ext.P8 and direct the 1st respondent to consider as to whether the petitioner is entitled to the benefit of the 2nd proviso to Rule 7(2). This shall be done within a period of two weeks from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

S. SIRI JAGAN, JUDGE

Acd